

APPENDIX A

The following provisions form Article XII of the General Conditions of the Contract between DCAM and the Construction Manager.

EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

1. Compliance Generally

For purpose of this Article, "minority" refers to Asians, Blacks, Western Hemisphere Hispanics, Native Americans, and Cape Verdeans; "Commission" refers to the Massachusetts Commission Against Discrimination. During the performance of this Contract, the Construction Manager and all of its Subcontractors (hereinafter collectively referred to as the Contractor) shall comply with all applicable equal employment opportunity, non-discrimination and affirmative action requirements, including but not limited to the following:

2. Non-Discrimination and Affirmative Action

A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age, handicap, sexual orientation, or sex. The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising; recruitment layoff; termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for apprenticeship. The Contractor shall comply with the provisions of M.G.L. c. 151B and all other applicable anti-discrimination and equal opportunity laws.

B. The Contractor shall comply with the provisions of Executive Order 478, entitled Order Regarding Nondiscrimination, Diversity, Equal Opportunity and Affirmative Action, which prohibits unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. Executive Order 478 is herein incorporated by reference and made a part of this Contract.

Pursuant to E.O. 478 the Contractor and any subcontractors may not engage in discriminatory employment practices; and the Contractor certifies that they are in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. These provisions shall be enforced through the contracting agency, the Operational Services Division, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of Contract that may subject Contractor to appropriate sanctions. The Contractor shall comply with the provisions of Executive Order No. 246 entitled Revoking and Superseding Executive Orders Numbers 143 and 150, with respect to affirmative action programs for handicapped individuals, which is herein incorporated by reference and made a part of this Contract.

C. In connection with the performance of the Work, the Contractor shall undertake in good faith affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age, sexual orientation, or sex, and to eliminate and remedy any effects of such discrimination in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and in-service or apprenticeship

training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age, sexual orientation, or sex. A purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for future public construction projects.

D. If the Contractor shall use any subcontractor on any work performed under this Contract, the Contractor shall take affirmative steps to negotiate with qualified minority and women subcontractors. These affirmative steps shall cover both pre-bid and post-bid periods. It shall include notification to the State Office of Minority and Women Business Assistance or its designee, while bids are in preparation, of all products, work or services for which the Contractor intends to negotiate bids. In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this Contract relative to non-discrimination and affirmative action.

E. As part of its obligation of remedial action under this Article, the Contractor shall maintain on this project not less than the percent ratio set forth in the Owner – Construction Manager Agreement of minority employee worker hours to total worker hours in each job category including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work" enumerated in M.G. L. c. 149, s. 44F.

F. In the hiring of minority journeypersons, apprentices, trainees and advanced trainees, the Contractor shall rely on referrals from a multi-employer affirmative action program approved by the Commission, traditional referral methods utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the Liaison Committee or DCAM.

3. Liaison Committee, Reports and Records

A. At the option of DCAM there may be established for the term of this Contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of one representative each from the Awarding Authority, the Commission and such other representatives as may be designated by the Commission in conjunction with the Awarding Authority. The Contractor (or his agent, if any, designated by him as the on-Site equal employment opportunity officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee, consulting with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.

B. The Contractor shall prepare projected staffing tables on a quarterly basis. These shall be broken down into projections, by week, of workers required in each trade. Copies shall be furnished one week in advance of the commencement of the period covered, and also when updated, to the Awarding Authority and Liaison Committee. The Contractor shall prepare weekly reports in a form approved by the Awarding Authority of hours worked in each trade by each employee, identified as minority or non-minority. Copies of these shall be provided at the end of each such week to the Awarding Authority and to the Liaison Committee.

C. Records of employment referral orders, prepared by the Contractor, shall be made available to the Awarding Authority and to the Liaison Committee on request.

D. A designee of the Awarding Authority and a designee of the Liaison Committee shall each have right to access to the Site.

E. The Contractor shall comply with the provisions of M.G.L. c. 151B as amended, of the Massachusetts General Laws, both of which are herein incorporated by reference and made a part of this Contract.

F. The Contractor shall provide all information and reports required by the Awarding Authority or the Commission on forms and in accordance with instructions issued by either of them and will permit access to its facilities and any books, records, accounts and other sources of information which may be determined by the Awarding Authority or the Commission to affect the employment of personnel. This provision shall apply only to information pertinent to the Owner's supplementary affirmative action Contract requirements. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Awarding Authority or the Commission as appropriate and shall set forth what efforts he has made to obtain the information.

4. Sanctions

A. Whenever the Awarding Authority, the Commission, or the Liaison Committee believes the Contractor or any Subcontractor may not be operating in compliance with the terms of this Article, the Commission shall directly, or through its designated agent, conduct an appropriate investigation, and may confer with the parties, to determine if such Contractor is operating in compliance with the terms of this Article. If the Commission or its agent finds the Contractor or any Subcontractor not in compliance, it may make a preliminary report on non-compliance, and notify such Contractor in writing of such steps as will in the judgment of the Commission or its agent bring such Contractor into compliance. In the event that such Contractor fails or refuses to fully perform such steps, the Commission **may** make a final report of non-compliance, and recommend to the Awarding Authority the imposition of one or more of the sanctions listed below. If, however, the Commission believes the Contractor or any Subcontractor has taken or is taking every possible measure to achieve compliance, it shall not make a final report of non-compliance. Within fourteen days of the receipt of the recommendations of the Commission, the Awarding Authority shall move to impose one or more of the following sanctions, as it may deem appropriate to attain full and effective enforcement:

- (1) The recovery by the Awarding Authority from the Contractor of 1/100 of 1% of the Contract award price or \$1,000 whichever sum is greater, in the nature of liquidated damages or, if a Subcontractor is in non-compliance, the recovery by the Awarding Authority from the Contractor, to be assessed by the Contractor as a back charge against the subcontractor, of 1/10 of 1% of the sub-Contract Price, or \$400 whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply;
- (2) The suspension of any payment or part thereof due under the Contract until such time as the Contractor or any subcontractor is able to demonstrate his compliance with the terms of the Contract;
- (3) The termination, or cancellation, of the Contract, in whole or in part, unless the Contractor or any Subcontractor is able to demonstrate within a specified time his compliance with the terms of the contract;
- (4) The denial to the Contractor or any subcontractor of the right to participate in any future contracts awarded by the Awarding Authority for a period of up to three years.

B. If at any time after the imposition of one or more of the above sanctions a Contractor is able to demonstrate that it is in compliance with this Article, the Contractor may request the Awarding Authority, in consultation with the Commission, to suspend the sanctions conditionally, pending a final determination

by the Commission as to whether the Contractor is in compliance. Upon final determination of the Commission, the Awarding Authority, based on the recommendation of the Commission, shall either lift the sanctions or reimpose them.

C. Sanctions recommended by the Commission and enumerated under Section A above shall not be imposed by the Awarding Authority except after an adjudicatory proceeding, as that term is used in M.G.L. c. 30A, has been conducted. No investigation by the Commission or its agent shall be initiated without prior notice to the Contractor.

D. Notwithstanding the provisions of 4A-4C above, if the Awarding Authority determines after investigation that the Contractor or any Subcontractor is not in compliance with the terms of this Article, it may suspend any payment or portion thereof due under the Contract until the contractor demonstrates to the satisfaction of the Awarding Authority compliance with the terms of this Article. This temporary suspension of payments by the Awarding Authority is separate from the sanctions set forth in Section 4A-4C of this Article above, which are determined by MCAD and recommend to the Awarding Authority. Payment may be suspended only after the Contractor and any other interested party shall have been given the opportunity to present evidence in support of its position at an informal hearing held by the Awarding Authority, and the Awarding Authority has concluded upon review of all the evidence that such penalty is justified. Payment shall not be suspended if the Awarding Authority finds that the Contractor made its best efforts to comply with this Article, or that some other justifiable reason exists for waiving the provisions of this Article in whole or in part.

APPENDIX B to General Conditions of the Contract

The following provisions form Article XIII of the General Conditions of the Contract between DCAM and the Construction Manager.

GOALS FOR PARTICIPATION BY MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES (EXECUTIVE ORDER 390, M.G.L. c. 7, s. 40N)

1. Goals.

A. The goals for minority business enterprise and woman business enterprise participation established for this Contract are as set forth in the Owner - Contractor Agreement.

B. The CM and all Subcontractors, sub-subcontractors, and materials suppliers shall comply with all of the terms and conditions of this Article, which include the provisions pertaining to M/WBE participation set forth in the Owner - Contractor Agreement in order to meet the M/WBE participation goals established for this Contract.

2. M/WBE Participation Credit.

A. If the CM is itself an MBE or WBE, M/WBE participation credit shall be given in an amount equal to the entire Contract Price. If the CM is not an MBE or WBE, then M/WBE participation credit will be given for the value of the Work that is actually performed by each MBE or WBE subcontractor or sub-subcontractor.

B. If the CM is a joint venture with one or more M/WBE joint venturers, M/WBE participation credit shall be given to the joint venture as follows:

(1) If the joint venture is certified by SOMWBA as an MBE or WBE, M/WBE participation credit shall be given in an amount equal to the entire Contract Price.

(2) If the joint venture is not certified as an MBE or WBE by SOMWBA, M/WBE participation credit shall be given to the joint venture for the value of the Work that is performed by the M/WBE joint venturer(s), and for the value of the Work that is actually performed by each MBE or WBE subcontractor or sub-subcontractor.

C. If an M/WBE supplies but does not install equipment or materials, M/WBE participation credit shall be given only if the M/WBE supplier is regularly engaged in sales of equipment or supplies to the construction industry from an established place of business. M/WBE participation credit shall be given the full amount of the purchase order only if the M/WBE supplier manufactures the goods or substantially alters them before resale. In all other cases, M/WBE participation credit shall be given for 10% of the purchase order.

D. MBE participation credit shall be given for the work performed by MBEs only, and WBE participation credit shall be given for the work performed by WBEs only. MBE participation may not be substituted for WBE participation, nor may WBE participation be substituted for MBE participation.

3. Establishing M/WBE Status.

A. A minority owned business shall be considered an MBE only if it has been certified as a minority business enterprise by the State Office of Minority and Women Business Assistance ("SOMWBA").

B. A woman owned business shall be considered a WBE only if it has been certified as a woman business enterprise by SOMWBA.

C. Certification as a disadvantaged business enterprise ("DBE"), certification as an M/WBE by any agency other than SOMWBA, or submission of an application to SOMWBA for certification as an M/WBE shall not confer M/WBE status on a firm for the purposes of this Contract.

4. Subcontracts With M/WBEs.

Within thirty (30) days after the award of this Contract, the CM shall (i) execute a subcontract with each M/WBE Subcontractor which has executed a Letter of Intent

Approved by DCAM, (ii) cause its Subcontractors to execute a sub-subcontract with each M/WBE sub-subcontractor, and (iii) furnish DCAM with a signed copy of each such subcontract and sub-subcontract.

5. Performance of Contract Work by M/WBEs.

A. The CM shall not perform with its own organization or subcontract or assign to any other firm work designated to be performed by any W/MBE in the Letters of Intent or Schedule of M/WBE Participation without the prior Approval of DCAM, nor shall any M/WBE assign or subcontract to any other firm, or permit any other firm to perform any of its M/WBE Work without the prior Approval of DCAM.

Any such unapproved assignment, subcontracting, sub-subcontracting, or performances of M/WBE Work by others shall be a change in the M/WBE Work for the purposes of this Contract. DCAM WILL NOT APPLY TO THE M/WBE PARTICIPATION GOAL(S) ANY SUMS ATTRIBUTABLE TO SUCH UNAPPROVED ASSIGNMENTS, SUB-CONTRACTS, SUB-SUBCONTRACTS, OR PERFORMANCE OF M/WBE WORK BY OTHERS.

B. The CM shall be responsible for monitoring the performance of M/WBE Work to ensure that each scheduled M/WBE performs its own M/WBE Work with its own workforce.

C. The CM and each M/WBE shall provide DCAM with all information and documentation that DCAM determines is necessary to ascertain whether or not an M/WBE has performed its own M/WBE Work. At the discretion of DCAM, failure to submit such documentation to DCAM shall establish conclusively for the purpose of giving M/WBE participation credit under this Contract that such M/WBE did not perform such work.

6. Notification of Changes in M/WBE Work.

A. If at any time during the performance of the Contract the CM determines or has reason to believe that a scheduled M/WMBE is unable or unwilling to perform its M/WBE Work, or that there has been or will be a change in any M/WMBE Work, or that the CM will be unable to meet the M/WBE participation goal(s) for this Contract for any reason, the CM shall immediately notify DCAM Contract Compliance Office in writing of such circumstances.

B. Any notice of a change in M/WBE Work pursuant to subparagraph "A" above shall include a revised Schedule of M/WBE Participation, and additional or amended Letters of Intent and subcontracts, as the case may be.

7. Actions Required If There is a Reduction in M/WBE Participation.

A. In the event there is a change or reduction in any M/WBE Work which will result in the CM failing to meet the M/WBE participation goal(s) for this Contract, other than a reduction in M/WBE Work resulting from a Change Order initiated by DCAM, then the CM shall immediately undertake a diligent, good faith effort to make up the shortfall in M/WBE participation as follows:

(1) The CM shall identify all items of the Work remaining to be performed under the Contract that may be made available for subcontracting to W/MBEs. The CM shall send a list of such items of work to DCAM, together with a list of the remaining items of the Work that was not made available to M/WBEs and the reason for not making such work available for subcontracting to M/WBEs.

(2) The CM shall send written notices soliciting proposals to perform the items of the Work that may be made available for subcontracting to W/MBEs to all W/MBEs qualified to perform such work. The CM shall advise DCAM of (i) each W/MBE solicited, and (ii) each W/MBE listed in the SOMWBA directory under the applicable trade category who was not solicited and the reasons therefor. The CM shall also advise DCAM of the dates notices were mailed and provide a copy of the written notice(s) sent.

(3) The CM shall make reasonable efforts to follow up the written notices sent to M/WBEs with telephone calls or personal visits in order to determine with certainty whether the M/WBEs were interested in performing the work. Phone logs or other documentation must be submitted to DCAM evidencing this effort.

(4) The CM shall make reasonable efforts to assist M/WBEs that need assistance in obtaining insurance, bonds, or lines of credit in order to perform work under the Contract, and shall provide DCAM with evidence that such efforts were made.

(5) The CM shall provide DCAM with a statement of the response received from each M/WBE solicited, including the reason for rejecting any M/WBE who submitted a proposal.

(6) The CM shall take any additional measures reasonably requested by DCAM to meet the M/WBE participation goal(s) established for this Contract, including, without limitation, placing advertisements in appropriate media and trade association publications announcing the CM's interest in obtaining proposals from M/WBEs, and/or sending written notification to M/WBE economic development assistance agencies, trade groups and other organizations notifying them of the project and of the work available to be subcontracted by the CM to M/WBEs.

B. If the CM is unable to meet the M/WBE participation goals for this Contract after complying fully with each of the requirements of paragraph "A" above, and the CM is otherwise in full compliance with the terms of this Article, DCAM may reduce the M/WBE participation goals for this Contract to the extent that such goals cannot be achieved.

8. Suspension of Payment and/or Performance for Noncompliance.

A. If at any time during the performance of this Contract, DCAM determines or has reason to believe that (1) there has been a change or reduction in any M/WBE Work which will result in the CM failing to meet the M/WBE participation goal(s) for this Contract, other than a reduction in M/WBE Work resulting from a change in the Contract work ordered by DCAM, and (2) the CM has failed to comply fully with all of the terms and conditions of paragraphs 1 through 7 above, DCAM may: (1) suspend payment to the CM of an amount equal to the value of the work which was to have been performed by an M/WBE pursuant to the CM's Schedule of M/WBE Participation but which was not so performed, in order to ensure that sufficient Contract funds will be available if liquidated damages are assessed pursuant to paragraph 9, and/or

(2) suspend the CM's performance of this Contract in whole or in part.

B. DCAM shall give the CM prompt written notice of any action taken pursuant to paragraph A above and shall give the CM and any other interested party, including any M/WBEs, an opportunity to present evidence to DCAM that the CM is in compliance with the requirements of this Article, or that there is some justifiable reason for waiving the requirements of this Article in whole or in part. DCAM may invite SOMWBA and the Massachusetts Commission Against Discrimination to participate in any proceedings undertaken pursuant to this paragraph.

C. Upon a showing that the CM is in full compliance with the requirements of this Article, or that the CM has met or will meet the M/WBE participation goals for this Contract, DCAM shall release any funds withheld pursuant to clause A(1) above, and lift any suspension of the CM's performance under clause A(2) above.

9. Liquidated Damages; Termination.

A. If payment by DCAM or performance by the CM is suspended by DCAM as provided in paragraph 8 above, DCAM shall have the following rights and remedies if the CM thereafter fails to take all action necessary to bring the CM into full compliance with the requirements of this Article, or if full compliance is no longer possible because the default of the CM is no longer susceptible to cure, if the CM fails to take such other action as may be required by DCAM to meet the M/WBE participation goals set forth in this Contract:

(1) DCAM may terminate this Contract, and/or

(2) DCAM may retain from final payment to the CM, as liquidated damages, an amount equal to the difference between (x) the total of the M/WBE participation goals set forth in this Contract, and (y) the amount of M/WBE participation credit earned by the CM for M/WBE Work performed under this Contract as determined by DCAM, the parties agreeing that the damages for failure to meet the M/WBE participation goals are difficult to determine and that the foregoing amount to be

retained by DCAM represents the parties' best estimate of such damages. Any liquidated damages will be assessed separately for MBE and WBE participation.

B. Before exercising its rights and remedies hereunder, DCAM may, but DCAM shall not be obligated to, give the CM and any other interested party another opportunity to present evidence to DCAM that the CM is in compliance with the requirements of this Article or that there is some justifiable reason for waiving the requirements of this Article in whole or in part. DCAM may invite SOMWBA and the Massachusetts Commission Against Discrimination to participate in any proceedings undertaken hereunder.

10. Reporting Requirements.

The CM shall submit to DCAM all information or documentation that is necessary in the judgment of DCAM to ascertain whether or not the CM has complied with any of the provisions of this Article.

11. Awarding Authority's Right to Waive Provisions of this Article in Whole or In Part.

DCAM reserves the right to waive any provision or requirement of this Article if DCAM determines that such waiver is justified and in the public interest. No such waiver shall be effective unless in writing and signed by a representative of DCAM's Compliance Office or the office of its General Counsel. No other action or inaction by DCAM shall be construed as a waiver of any provision of this Article.

APPENDIX C

PROCEDURES FOR AWARD OF SUBCONTRACTS

Pursuant to M.G.L. c.149A, as contained in Chapter 193 of the Acts of 2004, the Division of Capital Asset Management (“DCAM”) is required to develop a process consistent with legal requirements for the selection of subcontractors for construction manager at risk projects. This process is described in these Procedures for Award of Subcontracts (the “Procedures”). The Procedures are divided into three parts. The first part describes the prequalification and procurement of “Trade Contractors”, which, for the purposes of the Procedures, shall mean the subcontractors performing work in trade categories covered by Section 44F of Chapter 149. The second part describes the prequalification and procurement of all subcontractors that are not Trade Contractors. The third part addresses additional procurement matters.

For the purposes of the Procedures, the term Project shall mean the specific construction project to which the Procedures are being applied; the term CM shall mean the construction manager at risk selected by DCAM to construct the Project; the term Designer shall mean the firm (and its subconsultants) selected by DCAM to design; the term Project Manager shall refer to the DCAM staff serving as Project Manager on the project; and the term Applicant shall mean any firm that submits a response pursuant to the Procedures.

I. TRADE CONTRACTORS

A. Applicability of Procedures

1. Subcontracts Subject to Trade Contract Procedures. The procedures set forth in Sections 2 and 3 below shall govern the award of subcontracts by the CM for the furnishing of labor, materials, and equipment in the performance of the categories of work listed below whenever the estimated construction cost of such category of work exceeds \$20,000:

Roofing and Flashing	Glass and Glazing
Metal windows	Painting
Waterproofing, Damp-proofing and Caulking	Plumbing
Miscellaneous and Ornamental Iron	Heating, Ventilating, and Air Conditioning
Lathing and Plastering;	Electrical work
Acoustical Tile	Elevators
Marble	Masonry work
Tile	Fire Protection
Terrazzo	Any other categories of work selected by
Resilient Floors	DCAM for designation as Trade Contract work.

The subcontractors performing these trades are referred to throughout the Contract Documents as “Trade Contractor(s).” Contracts for work in these categories of work where the estimated cost of such work exceeds \$20,000 are referred to as “trade contracts.”

B. Qualification of Trade Contractors

1. Prequalification Committee. DCAM shall establish a prequalification committee (“the Prequalification Committee”) consisting of four members. The members shall include two employees of DCAM with management roles in the construction of large buildings, a representative of the Designer, and a representative of the CM. The Commissioner shall designate the Chairperson of the Prequalification Committee. An alternate may be appointed for each member of the Prequalification Committee to serve on occasions when the regular member cannot be available. Both the representative of the Designer and CM serving on the Prequalification Committee, and the alternates representing the Designer and CM shall be subject to DCAM approval. The Prequalification Committee shall conduct the prequalification of trade contractors as set forth in Sections 2 and 3 of the Procedures. The CM will provide assistance to the Prequalification Committee in the exercise of its responsibilities under the Procedures, including assistance from CM staff. Three members of the Prequalification Committee shall constitute a quorum for the purposes of conducting the Prequalification Committee’s official business. The Commissioner or his designee may join any meeting of the Prequalification Committee as a voting member in order to achieve a quorum, if in the Commissioner’s judgment the action scheduled for such meeting cannot be postponed without adverse consequences to the Project.

Request for Qualifications. DCAM shall issue a request for qualifications (“RFQ”) for each category of work listed in Section 1.1 if such work is required on the Project. The RFQ shall be placed on the Comm-PASS web site; advertised in a newspaper of general circulation in the area of the Project and in the *Central Register* established under Massachusetts General Laws, Chapter 9, Section 20, and in such additional media as DCAM and the Prequalification Committee may deem appropriate at least fourteen (14) calendar days before the deadline for Applicants to submit a response to the RFQ by submission of a Statement of Qualifications (“SOQ”). All interested Trade Contractors shall be eligible to respond to the RFQ and participate in the prequalification process. The CM firm may submit its qualifications to bid on trade contract work provided that the CM customarily performs the work for which it submits its qualifications and does so with employees on its own payroll, and provided that the CM meets all the requirements of the selection process. The RFQ shall be prepared by DCAM in a form consistent with the requirements of M.G.L. c. 149A and in consultation with the Prequalification Committee and the CM. The RFQ shall contain a form or forms (individually or collectively, the DCAM “Statement of Qualifications” or “SOQ”) requiring the information necessary for the Prequalification Committee to determine if the Applicant is qualified to perform the category of work for which it seeks prequalification on the Project. DCAM’s Standard form RFQ and SOQ will be provided by DCAM and must be utilized as the RFQ and SOQ for the Project. The RFQ shall include, at a minimum:

- a. the date, time, and place for submission;
- b. relevant information about the project and the bidding process;
- c. the specific criteria for trade contractor prequalification and selection;
- d. a statement indicating that the RFQ will be used to prequalify trade contractors that will be invited to submit a bid; and

- e. that the responders' names are to be posted, but that there shall be no public opening of responses.

Prequalification Criteria. The Prequalification Committee shall evaluate the information submitted by each Applicant on its DCAM Statement of Qualifications, the results of reference checks performed by DCAM and/or the CM, and any other information required or obtained by the Prequalification Committee. The following subparagraphs enumerate the legally required categories to be used by the Prequalification Committee in evaluating the Applicants, the subcategories of information within each category, and the specific point allocation required for prequalification within each category. Applicants must achieve an overall score of 70 or greater and must also achieve the minimum required points within each category in order to be deemed prequalified. Applicants that do not achieve both the minimum scores within each category and do not achieve an overall score of 70 or above shall not be deemed prequalified.

a. **Management Experience (50 points, minimum of 25 required for approval)**

- i) Business owners - The name, title, years with firm of the owner(s) of the business
- ii) Management personnel - The names, title, education and construction experience, years with firm, and list of projects completed by all management personnel.
- iii) Similar project experience - The project name(s), description, description of scope, original trade contract sum, final trade contract sum with explanation, and date completed of similar projects.
- iv) Terminations – A list of any projects on which the trade contractor was terminated or failed to complete the work.
- v) Lawsuits – A list of commercial lawsuits in which the trade contractor is a defendant or defendant-in-counterclaim with regard to construction contracts within the last 3 years. The lawsuits shall not include any actions that primarily involve personal injury or workers' compensation claims, or where the sole cause of action involves the trade contractor's exercise of its rights for direct payment under the law.
- vi) Safety record – The three-year history of the trade contractor's workers' compensation experience modifier.

b. **References (30 points; minimum of 15 required for approval)**

- i) Client references - for all projects listed in clause (iii) of Management experience above, including the project name, client's name, address, telephone and fax number, and contact person.
- ii) Credit references - .A minimum of five credit references, including telephone and fax number of contact person from key suppliers, vendors and banks.
- iii) Public project record – A list of all completed public building construction projects as defined in section 44A of chapter 149 during the past three years with client's name, address, telephone and fax number and contact person.

- c. Capacity to Complete Projects – (20 points; minimum of 10 required for approval)
 - i) Annual revenue for prior three fiscal years. There shall be no requirement for submission of financial statements.
 - ii) Revenue under contract for next three fiscal years.
- d. Commitment Letter – (mandatory no points assigned)
Mandatory commitment letters from surety companies or authorized agents stating that payment and performance bonds at 110% of the estimated trade contract value will be provided to the applicant if it is the successful bidder. The surety company providing the commitment letter must be licensed to do business in the Commonwealth and appear on the United States Treasury Department Circular 570.
- e. Certificate of Eligibility – (mandatory, no points assigned)
All SOQs submitted after January 1, 2006 must include a DCAM issued certificate of eligibility listing the Applicant as currently certified as a subcontractor in the scope of work for which the Applicant is submitting its SOQ.
- f. Update Statement – (mandatory, no points assigned)
All SOQs submitted after January 1, 2006 must include a fully completed and current Update Statement prepared by the Applicant.

Applicants that are certified by the Massachusetts State Office of Minority and Women Business Enterprise (“SOMWBA”) as either a Minority Business Enterprise, a Women Business Enterprise or a Minority/Women Business Enterprise and provide documentation of current SOMWBA certification with their SOQ will have an additional 5 points added to their overall score.

If the Applicant is a joint venture, the Applicant must submit a copy of the joint venture agreement, signed by each member, and the joint venture agreement must clearly identify, for each member of the joint venture, such member’s proportionate share or interest in the financial or other benefits, risks or liabilities of the venture (“joint venture interest”). One member of the joint venture must have a joint venture interest greater than fifty (50) percent (“the Lead Venturer”). The requirements for prequalification in 2.3 a-f above shall be met by each member of the joint venture; and the bonding requirements of 2.3 d above shall be met by the Lead Venturer or by the joint venture as an entity. A joint venture prequalified by the Prequalification Committee must obtain a Certificate of Eligibility from DCAM prior to the time bids are filed and must submit the Joint Venture’s Certificate of Eligibility with its bid.

Joint ventures must be submitted for consideration by the Prequalification Committee. Following the deadline for submission of SOQs for a specific category of work, joint ventures for that category of work which were not submitted to the Prequalification Committee may not bid on that category of work, except that two firms both of whom were independently prequalified by the Prequalification Committee for that category of work, may form a joint venture to bid that category of work without further consideration by the Prequalification Committee provided the Joint Venture has been DCAM Certified prior to submitting its bid and submits the Joint Venture’s Certificate of Eligibility with its bid.

Deliberations of the Prequalification Committee. The Prequalification Committee shall consider each SOQ submitted based on the criteria set forth in Paragraph 2.3 above. The Prequalification Committee shall require that all mandatory submissions are submitted by the Applicant and apply a numerical scoring system, with both the minimum point scores for each category, and a score of 70 out of a possible 100 overall points, required to be prequalified. The Prequalification Committee shall prepare a written record of the evaluation of each Applicant. The scoring system shall provide for the assigning of scores as follows. The Prequalification Committee shall first consider whether the Applicant has met the requirements of Subparagraphs d, e and f, bonding commitment letter, certificate of eligibility and update statement. If the Applicant has satisfied those criterion, it shall be awarded up to 100 points using the criteria listed above. Applicants that do not meet the requirements of Subparagraphs d, e and f shall not be presented to the Prequalification Committee for consideration.

Any Applicant that fails to achieve either an overall score of at least 70 or that fails to achieve the minimum required points within each category shall be deemed not to be prequalified for the category of work for which the Applicant sought prequalification. If it is determined at any time during the evaluation process, that an Applicant has willfully supplied materially false or misleading information in its application or otherwise, the Applicant may be eliminated from further consideration for prequalification for the Project and, in the discretion of the Commissioner, for any other projects requiring prequalification under these Procedures.

The decision of the Prequalification Committee shall be final and not subject to appeal except on the grounds of fraud or collusion. An Applicant firm's prequalification score shall be made available to that Applicant firm only and only upon request. An Applicant firm's score shall not be a public record as defined in M.G.L. c. 4, §7 and shall not be open to public inspection to the fullest extent possible under the law.

A list of the Applicants that have been determined by the Prequalification Committee to be prequalified and therefore eligible to bid shall be posted at the offices of DCAM listing the firms by trade categories. Applicants shall also be notified of the Prequalification Committee's determination on prequalification by mail at the address furnished by each Applicant.

The Prequalification Committee reserves the right to reopen the prequalification process for any category of work before it has completed its evaluation of firms that previously submitted DCAM SOQs and/or to hold multiple rounds of prequalification for any given category of work. In either case, any Applicant that has submitted a complete DCAM SOQ shall not be required to submit another one, although any Applicant not prequalified may elect to amend its SOQ prior to the latest deadline for submitting information for the trade contract for which the Applicant seeks to be prequalified.

No person or firm suspended or debarred pursuant to Massachusetts General Laws Chapter 29, Section 29F, or Chapter 149, Section 44C, or disqualified pursuant to Chapter 7, Section 38D, or which has been debarred by the Federal Government shall be determined to be qualified to compete for a trade contract or any other contract or subcontract to be issued on the Project. If any Applicant determined to be qualified to perform one or more trade contracts is subsequently suspended or debarred pursuant to such laws, the qualification of such Applicant shall be rescinded and such Applicant shall be notified of such action and eliminated from the list of prequalified bidders.

Determinations to Remain in Effect. The Prequalification Committee's determinations as to which Applicants are prequalified shall remain in effect, subject to the following provisions of this Section 2.5, for the duration of the Project. Upon receipt at any time of additional information deemed material and significant by the Prequalification Committee regarding a previously prequalified Applicant's qualifications or responsibility, including, but not limited to, compliance with any minimum prequalification requirements, the Prequalification Committee may determine, in consultation with DCAM and the CM, that the Applicant is not qualified to perform the applicable trade contract(s) for the Project. In such event, the Prequalification Committee shall notify the Applicant of its determination, and inform the Applicant of any information on which the Prequalification Committee's determination is based that was not furnished by the Applicant.

C. Bidding

1. Requests for Bids. A request for bids ("RFB") will be issued for each trade contract subject to Sections 2 and 3 of these Procedures. The RFB will only be issued to the Trade Contractors appearing on the list of prequalified Applicants for the applicable trade contract determined pursuant to Section 2 above. The RFB shall include at least the following attachments:
 - a. the date, time and place for submission of responses to the request for bids. All Trade Contractor bids for DCAM projects will be submitted and opened at DCAM's Bid Room;
 - b. fully detailed drawings and specifications by class of work in accordance with paragraph (a) of Subsection 1 of Section 44F of Chapter 149 of the Massachusetts General Laws (i.e., separate specification sections for the trades listed in Paragraph 1.1 above) which shall provide for full competition for each item of material to be furnished under the contract as set forth under subsection (b) of M.G.L. c.30, §39M;
 - c. drawings and specifications that provide for full competition for each item of material to be furnished under the contract as set forth under Subsection (b) of Section 39M of Chapter 30 of the Massachusetts General Laws;
 - d. a detailed definition of the Trade Contractor's scope of work, including alternates and unit price items, if any, within that scope of work;
 - e. a project schedule indicating the planned sequence and duration of each trade contractor's work;
 - f. list of the Trade Contractors prequalified for the work covered by the RFB;

- g. a Trade Contractor bid form, in a format provided by DCAM, that shall require, without limitation, a listing of price, addenda, alternates and unit price items, if any, for the trade work; certification that the trade contractor will perform the complete trade work with employees on his own payroll, except for work customarily performed by sub-trade subcontractors within the trade; and the names of all sub-trade subcontractors to be used if awarded the trade contract and each sub-trade contract sum; to the extent applicable, an identification by the Trade Contractor that it is a MBE or WBE or a list of the MBEs and/or WBEs proposed to be used by the Trade Contractor;
- h. an affidavit that must be executed by all bidders confirming that all sub-trade subcontractors named on the bid form have been prequalified by the Trade Contractor using criteria similar to the criteria for the prequalification of Trade Contractors;
- i. an affidavit of tax compliance that must be executed by all bidders;
- j. an affidavit of prevailing wage compliance pursuant to M.G.L. c. 149, §§ 26 and 27 that must be executed by all bidders;
- k. a non-collusion affidavit that must be executed by all bidders;
- l. a requirement that a bidder post a 5% bid bond from a surety company licensed to do business in the Commonwealth and whose names appears on U.S. Treasury Department Circular 570; but the bid bond shall be returned to the bidder if the bidder is not selected as the Trade Contractor;
- m. a budget for the project, and the budget amount for the trade contract scope of work as provided in the project guaranteed maximum price, if available, or as provided in the most recent budget for the project;
- n. a requirement that a bidder submit a current Certificate of Eligibility issued by DCAM to the Trade Contractor showing that the Trade Contractor is certified for the trade category for which the bid is submitted.
- o. a requirement that a bidder submit a completed Update Statement with its bid; and
- p. a Trade Contractor agreement form as set forth in M.G.L. c. 149A, §8 (k). The prequalified Trade Contractors shall submit bids in compliance with the requirements of the Request for Bids package.

2. Bid Opening, Award, Rejection and Negotiation of Bids. Bids shall be opened publicly by DCAM. Bids for each trade shall be: a) accepted only from firms appearing on the list of prequalified firms described in Paragraph 2.4 for such trade; b) submitted as set forth in the RFB, and c) opened publicly. Any bid which does not include the bid bond or affidavits required pursuant to law or any response in which the information requested is incomplete, conditional, or obscure or which contains any additions not required in the request for bids package shall be rejected. The trade contract for each trade shall be awarded to the lowest prequalified bidder except that DCAM reserves the right to reject the bids of any and all Trade Contractors if: a Trade Contractor is not eligible to submit a bid; if the bid does not represent the bid of a person competent to perform the work specified; or if less than three such bids were received and the prices are not reasonable for acceptance without further negotiation or competition. In addition if fewer than three responsive bids are received for any trade category and the lowest

bid exceeds the estimated cost for the work, the CM shall attempt to negotiate an acceptable price with the lowest prequalified bidder. If the negotiations are unsuccessful, the construction manager shall terminate negotiations with the lowest prequalified bidder and shall initiate negotiations with the trade contractor who was the second lowest prequalified bidder. If the CM is unsuccessful in negotiating an acceptable price with the lowest prequalified bidder and second lowest prequalified bidder, the construction manager, on behalf of and with the consent of the public agency, shall solicit additional bids utilizing the procedures for selection of subcontractors who are not trade contractors, set out below and in M.G.L. c. 149A, § 8 (j).

3. Trade Contract Execution. Each trade contractor selected to perform work on the Project shall return an executed trade contract including the required performance and payment bonds and insurance certificate to the CM within 10 business days of receipt of the trade contract from the CM. The trade contract shall be the trade contract agreement required by law and in a form provided by DCAM.

II. OTHER SUBCONTRACTS

A. Applicability of Procedures

1. Subcontracts Subject to Procedures For Other Subcontracts. The process set forth in these Sections A. and B. of the Procedures shall apply to the procurement of subcontracts and subcontractors that are not subject to the provisions of Sections 2 and 3 above, specifically subcontractors that are not Trade Contractors, and where the subcontract scope of work has an estimated value that is equal to or exceeds \$20,000.

B. Prequalification and Procurement

1. Subcontracts in With An Estimate Cost equal to or greater than \$20,000. For Subcontracts that are not trade contracts with an estimated cost equal to or greater than \$20,000, the CM shall submit to DCAM for its approval the qualifications which it believes a subcontractor must have to perform the work of the subcontract and a list of a minimum of three (3) subcontracting firms, and preferably at least five (5) subcontracting firms, which the CM believes meet the qualifications. The CM shall submit information in a form and content satisfactory to DCAM concerning the qualifications and responsibility of the proposed subcontractors and, when relevant, how the selection will further the CM's compliance with its Project MBE and WBE participation goals. The CM firm may submit its qualifications to bid on subcontract work provided that the CM customarily performs the work for which it submits its qualifications and does so with employees on its own payroll, and provided that the CM meets all the requirements of the selection process. DCAM may eliminate firms from the list of firms submitted by the CM, and DCAM may add firms to the list submitted by the CM. The CM must add the firms requested by DCAM to the list if the firms are acceptable to the CM. If the firms DCAM requested be added are not acceptable to the CM based upon qualifications, ability or for any other reason the CM must advise DCAM of its objections and the basis for the objections in writing. If DCAM determines that the CM's objections to the DCAM requested firm(s) are valid then the requested firms will not be added to the list otherwise the firm(s) requested by DCAM will be added.

The CM will invite all subcontractors on the approved list to submit bids for the subcontract work, using forms and procedures approved by DCAM. The bids shall be based on detailed bidding information developed by the CM for the subcontract work. The CM will submit to DCAM a list of bids submitted for each subcontract and with the list will indicate the bidder it recommends be selected to be awarded a subcontract. The CM shall along with its submission provide a written explanation as to the reasons for its selection and recommendation. The CM's recommendation will be based on relevant factors including, but not limited to, price, quality of work, and MBE and/or WBE participation. DCAM approval is required before a subcontract can be awarded by the CM to a subcontractor, which approval shall not be unreasonably withheld provided the selection will not have an adverse effect on meeting project goals including, but not limited to, price, quality of work and/or MBE/WBE participation. In no event will the selection of a subcontractor affect the GMP agreed to by the CM.

The CM may, with the approval of DCAM, reject the proposals for a subcontract and either resolicit that scope of work or negotiate with one or more of the firms that submitted the rejected proposals. Such rejection may be based on the proposal being too high compared to the amount carried in the GMP for that scope of work or upon any other basis approved by DCAM.

2. Subcontracts With An Estimated Cost Less Than \$20,000. Subcontracts with an estimated cost less than \$20,000, and subcontracts for the supply of materials or equipment not including performance of labor in construction at the Project site, regardless of the estimated cost, may be awarded by the CM using any method selected by the CM with the approval of DCAM.

III. OTHER PROCUREMENT PROVISIONS

A. Emergencies

In case of an emergency, DCAM or the CM, with the prior approval of DCAM, may award a contract for such work as is necessary to preserve or protect the health or safety of persons or property on the basis of such competitive bids or proposals as it can reasonably obtain in time to respond to the emergency and without public advertisement or opening of bids or proposals; or the CM may perform such work with its own forces.

B. Termination of Contracts

Termination of Trade Contracts and Other Subcontracts. If a trade contract, or other subcontract, is terminated in whole or in part by the CM **after** the subcontractor commences work but prior to completion of the work covered by such trade contract or other subcontract on account of breach or default by the trade contractor or other subcontractor, or for other reasons in the public interest approved by DCAM, the CM may engage a replacement subcontractor using any method selected by the CM and approved by DCAM, or may perform the affected work with its own forces, as necessary to preserve, protect, or complete the work without following these procedures and without public advertisement or opening of bids or proposals. The termination of a trade or other subcontractor prior to completion of its work shall not be the basis for an increase in the GMP.

C. Miscellaneous Provisions

1. Procurement Records. The Prequalification Committee and the CM shall ensure that DCAM has a complete set of the following records:

- a. All RFQs issued pursuant to Section 2 of these Procedures, including all addenda.
 - b. All DCAM SOQs and other information furnished to or otherwise obtained by the Prequalification Committee and the CM concerning qualification of each Applicant responding to an RFQ including any references or scoring obtained or generated in connection with the SOQs.
 - c. All RFBs issued by the CM to prequalified Trade Contractors pursuant to Section 3 of these Procedures.
 - d. All bids received from such Trade Contractors in response to such RFBs.
 - e. All solicitations for bids or proposals issued by the CM to firms other than Trade Contractors.
 - f. All bids and proposals received by the CM from such firms in response to such solicitations.
 - g. All contracts awarded pursuant to these procedures.
 - h. All other written documents required pursuant to the terms of these Procedures.
 - i. All other documents referring or relating to the evaluation of qualifications, proposals or bids, including but not limited to, all notes (to the extent included in Project files), memoranda, correspondence and meeting minutes, whether formal or informal, in either electronic media or hard copy, DCAM shall retain copies of such records for a period of six (6) years from the date of final payment under the contract to which such records relate. The Secretary of Administration and Finance and the Inspector General of the Commonwealth shall have access to all such records at any time upon reasonable notice.
2. Severability. If any provision of these Procedures shall be determined to be invalid or unenforceable, the remaining provisions of the Procedures shall remain in full force and effect.
 3. Time. The periods of time within which any party is required to act under the terms of these procedures when described in terms of “days” shall, unless otherwise specified, mean calendar days (and not business days), except that if the last day of any such time period falls on a Saturday, Sunday, or legal holiday in Massachusetts, the period of time during which the required action must be taken will be extended to the next following business day.

APPENDIX D

- Form for Subcontract between Construction Manager and Trade Contractor
- Form for Subcontract between Construction Manager and Subcontractor (other than Trade Contractor as set forth in the Contract Documents)



**COMMONWEALTH OF MASSACHUSETTS
FORM FOR SUBCONTRACT BETWEEN CONSTRUCTION MANAGER
AND TRADE CONTRACTOR AS SET FORTH IN THE CONTRACT
DOCUMENTS**

THIS AGREEMENT MADE THIS _____ DAY OF _____, 20____, by and between _____ a corporation organized and existing under the laws of _____ a partnership consisting of _____ an individual doing business as _____ hereinafter called the "Construction Management At Risk Firm" and _____ a corporation organized and existing under the laws of _____ an individual doing business as _____ hereinafter called the "Trade Contractor".

WITNESSETH that the Construction Management At Risk Firm and the Trade Contractor for the considerations hereafter named, agree as follows:

(1) The Trade Contractor agrees to furnish all labor and materials required for the completion of all work specified in Section No(s). _____ of the specifications for _____ (name of Sub-trade(s)) and the plans referred to therein and addenda No. _____ for the _____ (project) all as prepared by _____ designer. All work shall be in accordance with the contract documents listed on Exhibit A; and the detailed Scope of Work listed on Exhibit B. The Construction Management At Risk Firm agrees to pay the Trade Contractor as full payment for all the work in Exhibit B the sum of \$ _____. This price includes the following alternates: Nos. _____, _____, _____, _____.

(A) The Trade Contractor agrees to be bound to the Construction Management At Risk Firm by the terms of the hereinbefore described plans; specifications (including all general conditions stated therein) and addenda No. _____, and _____, and _____, and to assume to the Construction Management At Risk Firm all the obligations and responsibilities that the Construction Management At Risk Firm by those documents assumes to the _____ (Public Agency) hereinafter called the "Public Agency," except to the extent that provisions contained therein are by their terms or by law applicable only to the Construction Management At Risk Firm.

(B) The Construction Management At Risk Firm agrees to be bound to the Trade Contractor by the terms of the hereinbefore described documents and to assume to the Trade Contractor all the obligations and responsibilities that the Public Agency

by the terms of the hereinbefore described documents assumes to the Construction Management At Risk Firm, except to the extent that provisions contained therein are by their terms or by law applicable only to the Public Agency.

(2) The Construction Management At Risk Firm agrees to begin, prosecute and complete the entire work specified by the Public Agency in an orderly manner so that the Trade Contractor will be able to begin, prosecute, and complete the work described in this Trade Contract; and, in consideration thereof, upon notice from the Construction Management At Risk Firm, either oral or in writing, the Trade Contractor agrees to begin, prosecute and complete the work described in this Trade Contract in an orderly manner and in accordance with the Project Schedule attached as Exhibit C as it may be reasonably modified from time to time by agreement of the Construction Management At Risk Firm and the Trade Contractor.

(3) The Trade Contractor agrees to furnish to the Construction Management At Risk Firm, on execution of this Trade Contractor Agreement and prior to commencing the work, evidence of workers' compensation insurance as required by law and evidence of public liability and property damage insurance of the type and in limits required to be furnished to the Public Agency by the Construction Management At Risk Firm.

(4) The Construction Management At Risk Firm agrees that no claim for services rendered or materials furnished by the Construction Management At Risk Firm to the Trade Contractor shall be valid unless written notice thereof is given by the Construction Management At Risk Firm to the Trade Contractor during the first ten (10) days of the calendar month following that in which the claim originated.

(5) This Trade Contractor Agreement is contingent upon the execution of an amendment to the contract between the Construction Management At Risk Firm and the Public Agency for the work of the Trade Contractor.

(6) If the trade contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to sub-trade subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Construction Management At Risk Firm, or otherwise be guilty of a substantial violation of any provision of the contract, then the Construction Management At Risk Firm may, without prejudice to any other right or remedy and after giving the Trade Contractor and his surety seven days' written notice, terminate the employment of the Trade Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Trade Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the trade contract price shall exceed the expense of finishing the work including compensation for additional architectural, managerial and administrative services,

such excess shall be paid to the Trade Contractor. If such expense shall exceed such unpaid balance, the Trade Contractor shall pay the difference to the Construction Management At Risk Firm. The Construction Management At Risk Firm and Trade Contractor shall have the right to seek damages for breach of this Trade Contract without terminating this Trade Contract or ceasing performance hereunder.

(7) Trade Contractor is directed to the following executive orders, which are incorporated herein from the general conditions of the Construction Manager At Risk Contract: Order 481, regarding undocumented workers; Order 478, regarding nondiscrimination and affirmative action; Order 130, regarding anti-boycott agreement; Order 484, regarding clean energy and efficient buildings; Order 390, regarding affirmative market programs; and Order 195, regarding access to records. Trade Contractor is further directed to M.G.L. c. 7 s. 22C, which restricts the investment of state funds in companies doing business in Northern Ireland.

(8) The following exhibits are incorporated into their subcontract:

Exhibit A: Contract Documents

Exhibit B: Detailed Scope of Work

Exhibit C: Project Schedule

IN WITNESS WHEREOF, the parties hereto have executed this agreement the date and year first above-written.

SEAL ATTEST _____

Trade Contractor

SEAL ATTEST _____

Construction Management At Risk Firm

THIS FORM MAY BE REPRODUCED



**COMMONWEALTH OF MASSACHUSETTS
FORM FOR SUBCONTRACT BETWEEN CONSTRUCTION MANAGER AND
SUBCONTRACTOR OTHER THAN TRADE CONTRACTOR AS SET FORTH
IN THE CONTRACT DOCUMENTS**

THIS AGREEMENT made this _____ day of _____ 20____, by and between

_____ a corporation organized and existing under the law of _____ a partnership consisting of _____ an individual doing business as _____ hereinafter called the "Construction Manager or CM" and

_____ a corporation organized and existing under the laws of _____ a partnership consisting of _____ an individual doing business _____ hereinafter called the "Subcontractor",

WITNESSETH that the CM and the Subcontractor for the considerations hereafter named, agree as follows:

1. The Subcontractor agrees to furnish all labor and materials required for the completion of all work as follows: _____

_____ (attach additional sheets as necessary) according to the Specifications and Plans referred to therein and addenda No. _____, _____, _____ and _____ for the

_____ (complete title of project and project no. taken from the title page of the Specifications) all as prepared by _____

(Name of Designer or Engineer)

for the sum of _____ (\$ _____) and the CM agrees to pay the Subcontractor said sum for said work. This price includes the following alternates (and other items set forth in the sub-bid):

Alternate No(s) _____, _____, _____, _____, _____, _____.

(a) The Subcontractor agrees to be bound to the CM by the terms of the hereinbefore described Plans, Specifications (including all general conditions stated herein) and addenda No. _____, and _____, and _____, and to assume to the CM all the obligations and responsibilities that the CM by those documents assumes to the _____ hereinafter

(Awarding Authority)

called the "Awarding Authority", except to the extent that provisions contained herein are by their terms or by law applicable only to the CM.

(b) The CM agrees to be bound to the Subcontractor by the terms of the hereinbefore described documents and to assume to the Subcontractor all the obligations and responsibilities that the Awarding Authority by the terms of the hereinbefore described documents assumes to the CM, except to the extent that provisions contained therein are by their terms or by law applicable only to the Awarding Authority. The Subcontractor shall preserve and protect the rights of the DCAM under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall be subject to the Record Retention requirements as set forth in the Contract Documents.

2. The CM agrees to begin, prosecute and complete the entire work specified by the Awarding Authority in an orderly manner so that the Subcontractor will be able to begin, prosecute and complete the work described in this subcontract; and, in consideration thereof, upon notice from the CM, either oral or in writing, the Subcontractor agrees to begin, prosecute and complete the work described in this Subcontract in an orderly manner and with due consideration to the date or time specified by the Awarding Authority for the completion of the entire work.

3. The Subcontractor agrees to furnish to the CM within a reasonable time after the execution of this subcontract, evidence of workmen's compensation insurance as required by law and evidence of public liability and property damage insurance of the type and in limits required to be furnished to the Awarding Authority by the CM.

4. The CM agrees that no claim for services rendered or materials furnished by the CM to the Subcontractor shall be valid unless written notice thereof is given by the CM to the Subcontractor during the first ten (10) days of the calendar month following that in which the claim originated.

5. The Subcontractor agrees that it shall enter into similar agreements, as this, with its Subcontractors, except to the extent that provisions contained herein are by their terms or by law applicable only to the CM and/or Contractor.

6. The CM agrees that it has provided to the Subcontractor, prior to the execution of this Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Subcontract. The Subcontractor agrees that it shall similarly make copies of such Contract Documents available to its Subcontractors.

7. In the event of termination of the Contract due to the default of the CM or for any other reason, the DCAM shall have the right (but shall have no obligation) to assume, and/or accept assignment of and further assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the CM under the Subcontract with such Subcontractor. In the event of such assumption or assignment by the DCAM, the Subcontractor shall have no claim against the DCAM or such third party for work performed by such Subcontractor or other matters arising prior to termination of the Contract, and the DCAM or such third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after such assumption or assignment.

8. Subcontractor is directed to the following executive orders, which are incorporated in the general conditions of the Construction Manager At Risk Contract: Order 481, regarding undocumented workers; Order 478, regarding nondiscrimination and affirmative action; Order 130, regarding anti-boycott agreement; Order 484, regarding clean energy and efficient buildings; Order 390, regarding affirmative market programs; and Order 195, regarding access to records. Subcontractor is further directed to M.G.L. c. 7 s. 22C, which restricts the investment of state funds in companies doing business in Northern Ireland.

9. Nothing contained herein, shall be construed to create any contractual relationship between the Subcontractor and the DCAM.

10. This agreement is contingent upon the execution of a Contract for Construction Management Services between the CM and the Awarding Authority for the complete work.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above-written.

SEAL ATTEST

(Name of Subcontractor)

By: _____

SEAL ATTEST

(Name of CM)

By: _____

(City and State)

THIS FORM MAY BE REPRODUCED

APPENDIX E

COMMONLY USED FORMS

- **Procedure for Payment to Contractors (CM)**
- **Payment Voucher Input Form**
- **Requisition for Payment (CM) (DCAM Form S1b) and Instructions**
- **Instructions Regarding Change Orders and Contract Modifications (DCAM Form 13)**
- **Request for Approval of Wages and Rates for Change Order Pricing (DCAM Form 14)**
- **Format for Submission of Change Order (DCAM Form 15)**
- **Daily Time and Material Report for Change Orders**
- **Request and Agreement for a Change in the Plans, Specifications and/or Contract (DCAM Form 5)**
- **Notice of Intent**
- **Contractor's Weekly Workforce Report**
- **Minorities/Women in Contractor's Weekly Workforce Report**
- **Weekly Payroll Report Form and Statement of Compliance**
- **Quarterly Projected Workforce Table**
- **Certification of Payment by Contractor to MBE/WBE and Instructions**
- **Certificate of Completion by Minority/Women Business Enterprise**
- **Form for Transfer of Title (Work Not Incorporated, DCAM Form 16)**
- **Certificate of Agency Use and Occupancy -E-1**
- **Certificate of Final Inspection, Release and Acceptance - E-2**